

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LAWRENCE BLEERS,

Plaintiff,

v.

Case No.: 2:19-cv-806-FtM-38NPM

WALMART STORES EAST, LP,

Defendant.

ORDER¹

Before the Court is Plaintiff Lawrence Bleers Motion to Remand to State Court ([Doc. 6](#)) and Defendant Walmart Stores East, LP's Response in Opposition ([Doc. 12](#)). This is a slip-and-fall negligence case. ([Doc. 3](#)). Bleers filed this case in state court, and Walmart removed here. ([Doc. 1](#)). Now, Bleers wants to go back. But he is out of luck.

A defendant may remove a case from state court if the federal court has original jurisdiction. [28 U.S.C. § 1441\(a\)](#). Courts construe removal statutes strictly and resolve all jurisdictional doubts in favor of remand. *Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 411 (11th Cir. 1999). Walmart removed based on diversity jurisdiction. ([Doc. 1](#)).

Diversity jurisdiction exists when the parties are diverse and the amount in controversy exceeds \$75,000, exclusive of interests and costs. [28 U.S.C. § 1332\(a\)](#). When a complaint does not specify damages—as here—the removing party must prove amount in controversy by preponderance of the evidence. *Lowery v. Ala. Power Co.*, 483

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F.3d 1184, 1208 (11th Cir. 2007). “The substantive jurisdictional requirements of removal do not limit the types of evidence that may be used.” *Pretka v. Kolter City Plaza II, Inc.*, 608 F.3d 744, 755 (11th Cir. 2010). Among the evidence courts can consider are “affidavits, declarations, and other documentation.” *Id.* But federal law also “allows consideration of discovery responses.” *Harrison v. Red Bull Distribution Co.*, No. 2:19-cv-17-FtM-99MRM, 2019 WL 1123691, at *2 (M.D. Fla. Mar. 12, 2019); see also *Rowe v. U.S. Bancorp*, 569 F. App’x 701, 703 (11th Cir. 2014).

Here, Bleers contests the amount in controversy. But it exceeds the jurisdictional limit by a preponderance of the evidence for two reasons. First, Bleers admitted in state court the amount in controversy exceeds \$75,000, exclusive of interests, costs, and attorney’s fees. (Docs. 1-2 at 32; 1-6 at 1). And second, Bleers answered interrogatories showing over \$150,000 in medical bills from this accident. (Doc. 1-5 at 4-5). Thus, Walmart carried its burden to show the amount in controversy exceeds \$75,000. To the extent that Bleers argues Walmart cannot use admissions made in state court to prove jurisdiction here, Bleers is wrong. The Court just rejected this exact argument. *Maltese v. Burlington Coat Factory Direct Corp.*, No. 2:19-cv-616-FtM-38MRM, 2019 WL 4538905, at *2 (M.D. Fla. Sept. 19, 2019). Many others have as well. *E.g.*, *Red Bull*, 2019 WL 1123691, at *2; *Plotkin v. Target Corp.*, No. 15-cv-62427-GAYLES/Turnoff, 2016 WL 1752815, at *1 (S.D. Fla. May 3, 2016).

Accordingly, it is now

ORDERED:

Plaintiff’s Motion to Remand to State Court (Doc. 6) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida this 26th day of November, 2019.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record